

Assembly Bill No. 361

Passed the Assembly September 11, 2013

Chief Clerk of the Assembly

Passed the Senate September 10, 2013

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 3.9 (commencing with Section 14127) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, Mitchell. Medi-Cal: Health Homes for Medi-Cal Enrollees and Section 1115 Waiver Demonstration Populations with Chronic and Complex Conditions.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing federal law authorizes a state, subject to federal approval of a state plan amendment, to offer health home services, as defined, to eligible individuals with chronic conditions.

This bill would authorize the department, subject to federal approval, to create a health home program for enrollees with chronic conditions, as prescribed, as authorized under federal law. This bill would provide that those provisions shall not be implemented unless federal financial participation is available and additional General Fund moneys are not used to fund the administration and service costs, except as specified. This bill would require the department to ensure that an evaluation of the program is completed, if created by the department, and would require that the department submit a report to the appropriate policy and fiscal committees of the Legislature within 2 years after implementation of the program.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Health Homes for Enrollees with Chronic Conditions option (Health Homes option) under Section 2703 of the federal Patient Protection and Affordable Care Act (Affordable Care Act)

(42 U.S.C. Sec. 1396w-4) offers an opportunity for California to address chronic and complex health conditions through a “whole person” approach, while achieving the “Triple Aim” goals of improved patient care, improved health, and reduced per capita total costs. It is an opportunity to reverse determinants that lead to poor health outcomes and high costs among Medi-Cal beneficiaries.

(b) For example, people who frequently use hospitals for reasons that could have been avoided with more appropriate care incur high Medi-Cal costs and suffer high rates of early mortality due to the complexity and severity of their conditions and, often, their negative social determinants of health. Frequent users have difficulties accessing regular or preventive care and complying with treatment protocols, and the significant number who are homeless have no place to store medications, cannot adhere to a healthy diet or maintain appropriate hygiene, face frequent victimization, and lack rest when recovering from illness. Frequent hospital users who are not homeless survive on extremely low incomes and live in communities with limited resources and services.

(c) Increasingly, health providers are partnering with community behavioral health and social services providers to offer a person-centered interdisciplinary system of care that effectively addresses the needs of enrollees with multiple chronic or complex conditions, including frequent hospital users and people experiencing chronic homelessness, in settings where enrollees live. These health homes help people with chronic and complex conditions to access better care and better health, while decreasing costs.

(d) Federal guidelines allow the state to access enhanced federal financial participation for health home services under the Health Homes option for multiple target populations to achieve more than one policy goal.

SEC. 2. Article 3.9 (commencing with Section 14127) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 3.9. Health Homes for Medi-Cal Enrollees and Section
1115 Waiver Demonstration Populations with Chronic and
Complex Conditions

14127. For purposes of this article, the following definitions shall apply:

(a) “Department” means the State Department of Health Care Services.

(b) “Federal guidelines” means all federal statutes, and all regulatory and policy guidelines issued by the federal Centers for Medicare and Medicaid Services regarding the Health Homes for Enrollees with Chronic Conditions option under Section 2703 of the federal Patient Protection and Affordable Care Act (Affordable Care Act) (42 U.S.C. Sec. 1396w-4), including the State Medicaid Director Letter issued on November 16, 2010.

(c) (1) “Health home” means a provider or team of providers designated by the department that satisfies all of the following:

(A) Meets the criteria described in federal guidelines.

(B) Offers a whole person approach, including, but not limited to, coordinating other available services that address needs affecting a participating individual’s health.

(C) Offers services in a range of settings, as appropriate, to meet the needs of an individual eligible for health home services.

(2) A lead provider may contract with Medi-Cal providers, including, but not limited to, a managed care health plan, a community clinic, a mental health plan, a hospital, physicians, a clinical practice or clinical group practice, a rural health clinic, a community health center, a community mental health center, substance use disorder treatment professionals, school-based health centers, community health workers, community-based service organizations, a home health agency, nurse practitioners, physician’s assistants, social workers, and other paraprofessionals, to the extent that contracting with these providers is allowed under federal Medicaid law. Health home providers shall also establish noncontractual relationships with, and provide linkages to, housing providers.

(3) For purposes of serving the population identified in subdivision (c) of Section 14127.3, the department may require a lead provider to be a physician, a community clinic, a mental health

plan, a community-based organization, a county health system, or a hospital.

(4) The department may determine the model of health home it intends to create, including any entity, provider, or group of providers operating as a health team, as a team of health care professionals, or as a designated provider, as those terms are defined in Sections 256a-1 and 1396w-4(h)(5) and (h)(6) of Title 42 of the United States Code, respectively.

(d) “Health Home Program” means all of the state plan amendments and relevant waivers the department seeks and the federal Centers for Medicare and Medicaid Services approves.

(e) “Homeless” has the same meaning as that term is defined in Section 91.5 of Title 24 of the Code of Federal Regulations. A “chronically homeless individual” means a homeless individual with a condition limiting his or her activities of daily living who has been continuously homeless for a year or more, or had at least four episodes of homelessness in the past three years. For purposes of this article, an individual who is currently residing in transitional housing, as defined in Section 50675.2 of the Health and Safety Code, or who has been residing in permanent supportive housing, as defined in Section 50675.14 of the Health and Safety Code, for less than two years shall be considered a chronically homeless individual if the individual was chronically homeless prior to his or her residence.

14127.1. Subject to federal approval, the department may do all of the following to create a California Health Home Program (Health Home Program), as authorized under Section 2703 of the Affordable Care Act:

(a) Design, with opportunity for public comment, a program to provide health home services to Medi-Cal beneficiaries and Section 1115 waiver demonstration populations with chronic conditions.

(b) Contract with new providers, existing Medi-Cal providers, Medi-Cal managed care plans, or counties, or one or more of these entities, to provide health home services, as provided in Section 14128.

(c) Submit any necessary applications to the federal Centers for Medicare and Medicaid Services for one or more state plan amendments and any necessary Section 1115 waiver amendments to provide health home services to Medi-Cal beneficiaries, to newly eligible Medi-Cal beneficiaries upon Medicaid expansion under

the Affordable Care Act, and, if applicable, to Low Income Health Program (LIHP) enrollees in counties with LIHPs willing to match federal funds.

(d) Define the populations of eligible individuals.

(e) Develop a payment methodology, including, but not limited to, fee-for-service or per member, per month payment structures that may include tiered payment rates that take into account the intensity of services necessary to outreach to, engage, and serve the populations the department identifies.

(f) Identify the specific health home services needed for each population targeted in the Health Home Program, consistent with subdivision (b) of Section 14127.2.

(g) Submit applications and operate, to the extent permitted by federal law and to the extent federal approval is obtained, more than one health home state plan amendment and any necessary Section 1115 waiver amendments for distinct populations, different providers or contractors, or specific geographic areas.

(h) Limit the availability of health home services geographically.

14127.2. (a) The department may design one or more state plan amendments and any necessary Section 1115 waiver amendments to provide health home services to children or adults, or both, pursuant to Section 14127.1, and, considering consultation with stakeholders, shall develop the geographic criteria, beneficiary eligibility criteria, and provider eligibility criteria for each state plan amendment.

(b) Subject to federal approval for receipt of the enhanced federal reimbursement, services provided under the Health Home Program established pursuant to this article shall include all of the following:

(1) Comprehensive and individualized care management.

(2) Care coordination and health promotion, including connection to medical, mental health, and substance use disorder care.

(3) Comprehensive transitional care from inpatient to other settings, including appropriate followup.

(4) Individual and family support, including authorized representatives.

(5) Referral to relevant community and social services supports, including, but not limited to, connection to housing for participants who are homeless or unstably housed, transportation to

appointments needed to manage health needs, healthy lifestyle supports, child care when appropriate, and peer recovery support.

(6) Health information technology to identify eligible individuals and link services, if feasible and appropriate.

14127.3. (a) If the department creates a Health Home Program pursuant to this article, the department shall determine whether a health home state plan amendment that targets adults is operationally viable.

(b) (1) In determining whether a health home state plan amendment that targets adults is operationally viable, the department shall consider whether a state plan amendment and any necessary Section 1115 waiver amendments could be designed in a manner that minimizes the impact on the General Fund, whether the department has the capacity to administer the health home state plan amendment through the state, a contracting entity, a county, or regional approach, and whether a sufficient provider network exists for providing health home services to populations the department intends to target, including the populations described in subdivision (c).

(2) If the department determines that a health home state plan amendment that targets adults is operationally viable pursuant to paragraph (1), then the department shall design a state plan amendment and any necessary Section 1115 waiver amendments to target and provide health home services to beneficiaries who meet the criteria specified in subdivision (c).

(3) (A) If the department determines a health home state plan amendment that targets adults is not operationally viable, then the department shall inform the appropriate policy and fiscal committees of the Legislature, within 120 days of that determination, of the reasons the program is not operationally viable as described in paragraph (1), and about current efforts underway by the department that help to address health care issues experienced by homeless Medi-Cal beneficiaries.

(B) The requirement for informing the appropriate policy and fiscal committees of the Legislature under subparagraph (A) is inoperative four years after the date the report is due, pursuant to Section 10231.5 of the Government Code.

(c) A state plan amendment and any necessary Section 1115 waiver amendments submitted pursuant to this section shall target adult beneficiaries who meet both of the following criteria:

(1) Have current diagnoses of chronic, physical health, mental health, or substance use disorders prevalent among frequent hospital users.

(2) Have a level of severity in conditions established by the department, based on one or more of the following factors:

(A) Frequent inpatient hospital admissions, including hospitalization for medical, psychiatric, or substance use related conditions.

(B) Excessive use of crisis or emergency services.

(C) Chronic homelessness.

(d) (1) For the purposes of providing health home services to the population identified in subdivision (c), the department shall select health home providers or providers who plan to subcontract with health home team members with all of the following:

(A) Demonstrated experience working with frequent hospital or emergency department users.

(B) Demonstrated experience working with people who are chronically homeless.

(C) The capacity and administrative infrastructure to participate in the Health Home Program, including the ability to meet requirements of federal guidelines.

(D) A viable plan, with roles identified among providers of the health home, to do all of the following:

(i) Reach out to and engage frequent hospital or emergency department users and chronically homeless eligible individuals.

(ii) Link eligible individuals who are homeless or experiencing housing instability to permanent housing, such as supportive housing.

(iii) Ensure coordination and linkages to services needed to access and maintain health stability, including medical, mental health, and substance use care, as well as social services and supports to address social determinants of health.

(2) The department may design additional provider criteria to those identified in paragraph (1) after consultation with stakeholder groups who have expertise in engagement and services for the population identified in subdivision (c).

(3) The department may authorize health home providers eligible under this subdivision to serve Medi-Cal enrollees through a fee-for-service or managed care delivery system that may include

supplemental payments, and may allow for county-operated and other public and private providers to participate in this program.

(4) If the department designs a state plan amendment designed to serve the population identified in subdivision (c), the department shall design strategies to outreach to, engage, and provide health home services to the population identified in subdivision (c), based on consultation with stakeholders who have expertise in engaging, providing services to, and designing programs addressing the needs of, the population.

(5) If the department creates a health home program that targets adults described in subdivision (c), the department may also submit state plan amendments and any necessary waiver amendments targeting other adult populations.

14127.4. (a) The department shall administer this article in a manner that attempts to maximize federal financial participation, consistent with federal law.

(b) Except as provided in Section 14127.6, the nonfederal share shall be provided by funds from local governments, private foundations, or any other source permitted under state and federal law, including Section 1903(a) of the federal Social Security Act (42 U.S.C. Sec. 1396b(a)) and Section 433.51 of Title 42 of the Code of Federal Regulations, and may be used for administration, service delivery, evaluation, and design of the Health Home Program. The department, or counties contracting with the department, may also enter into risk-sharing and social impact bond program agreements to fund services under this article.

14127.5. (a) If the department creates a Health Home Program, the department shall ensure that an evaluation of the program is completed and shall, within two years after implementation, submit a report to the appropriate policy and fiscal committees of the Legislature. Stakeholders, including philanthropy, nonprofit organizations, and patient advocates, may participate in the department's evaluation design.

(b) The requirement for submitting the report under subdivision (a) is inoperative four years after the date the report is due, pursuant to Section 10231.5 of the Government Code.

14127.6. (a) The Health Home Program shall be implemented only if and to the extent federal financial participation is available and the federal Centers for Medicare and Medicaid Services

approves any state plan amendments and any necessary waivers sought pursuant to this article.

(b) Except as provided in subdivision (c), this article shall be implemented only if no additional General Fund moneys are used to fund the administration and costs of services.

(c) Notwithstanding subdivision (b), if the department projects, based on analysis of current and projected expenditures for health home services prior to, during, or after the first eight quarters of implementation, that this article can be implemented in a manner that does not or will not result in a net increase in ongoing General Fund costs for the Medi-Cal program, the department may use state funds to fund any Health Home Program costs.

(d) The department may use new funding in the form of enhanced federal financial participation for health home services that are currently provided to fund additional costs for new Health Home Program services.

(e) The department shall seek to fund the creation, implementation, and administration of the program with funding other than state general funds.

(f) The department may revise or terminate the Health Home Program any time after the first eight quarters of implementation if the department finds that the program fails to result in reduced inpatient stays, hospital admission rates, and emergency department visits, or results in substantial General Fund expense without commensurate decreases in Medi-Cal costs among program participants.

14128. (a) In the event of a judicial challenge of the provisions of this article, this article shall not be construed to create an obligation on the part of the state to fund any payment from state funds due to the absence or shortfall of federal funding.

(b) For the purposes of implementing this article, the department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis, and may amend existing managed care contracts to provide or arrange for services under this article. Contracts may be statewide or on a more limited geographic basis. Contracts entered into or amended under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of the

Government Code, and shall be exempt from the review or approval of any division of the Department of General Services.

(c) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific the process set forth in this article by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions, without taking regulatory action, until such time as regulations are adopted. It is the intent of the Legislature that the department be provided temporary authority as necessary to implement program changes until completion of the regulatory process.

(2) The department shall adopt emergency regulations no later than two years after implementation of this article. The department may readopt, up to two times, any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted pursuant to this section.

(3) The initial adoption of emergency regulations implementing this article and the readoptions of emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and readoptions authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and readoptions authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

Approved _____, 2013

Governor